

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAULA K. LUA and U.S. POSTAL SERVICE,
PROCESSING & DELIVERY CENTER, Los Angeles, CA

*Docket No. 02-1876; Submitted on the Record;
Issued February 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has any continuing emotional condition or disability on or after September 20, 2000 causally related to her accepted employment factors; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on May 13, 2002.

Appellant, a 46-year-old mailhandler, filed a notice of occupational disease on October 6, 1998 alleging that she developed anxiety and stress due to factors of her federal employment. The Office denied appellant's claim by decision dated May 21, 1999. Appellant requested an oral hearing on June 17, 1999. By decision dated March 6, 2000, the hearing representative set aside the Office's May 21, 1999 decision, finding that appellant had established compensable factors of employment and remanded her claim for additional development of the medical evidence.

The Office referred appellant for a second opinion examination. By decision dated September 20, 2000, the Office accepted that appellant had sustained a major depressive episode as a result of her accepted employment factors. However, the Office further found that appellant had no continuing disability nor residuals as a result of this condition on or after September 20, 2000.¹ Appellant requested an oral hearing. By decision dated July 25, 2001 and finalized July 26, 2001, the hearing representative affirmed the Office's September 20, 2000 decision. Appellant requested and received compensation for the period from October 6 to November 20, 1998.

Appellant requested reconsideration of the July 26, 2001 decision on May 12, 2002. By decision dated May 13, 2002, the Office declined to reopen appellant's claim for consideration of the merits.

The Board finds that appellant has no continuing disability nor residuals on or after September 20, 2000 causally related to her accepted employment factors.

¹ Appellant filed a second claim for an emotional condition alleging injury on December 28, 1999. The Board addressed this claim in docket number 01-1751, issued November 27, 2002.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

Appellant's attending physician, Dr. Jerome A. Goldfein, a Board-certified psychiatrist, completed a report on March 12, 1999 diagnosing adjustment disorder with depressive and anxious features and an occupational problem. Dr. Goldfein stated that appellant could return to work on November 23, 1998.⁶

The Office referred appellant for a second opinion evaluation with Dr. David Bedrin, a Board-certified psychiatrist. In his August 7 and 31, 2000 reports, he reviewed appellant's history of injury, performed an examination and diagnosed major depressive disorder by history. Dr. Bedrin stated that appellant's accepted employment factors caused or contributed to this condition. However, he stated that appellant's mental status examination at the time of his report was entirely within normal limits. Dr. Bedrin stated that appellant did not appear to be depressed, anxious or in any way emotionally distressed during his evaluation. He stated that appellant did not appear to be impaired from working at her usual and customary job at that time. Dr. Bedrin concluded that there was no active psychiatric diagnosis at the time of his evaluation.

Dr. Bedrin's report establishes that at the time of his examination in August 2000 appellant did not have an ongoing emotional condition. There is no medical evidence in the record addressing any continuing medical condition as a result of appellant's employment injury on or after September 20, 2000, the date upon which the Office found appellant had no continuing disability or medical residuals as a result of her accepted employment injury. As the medical evidence of record establishes that appellant did not have an active medical condition preventing her from working or requiring further medical treatment, the Office properly found that appellant was not entitled to compensation or medical benefits on or after September 20, 2000.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on May 13, 2002.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ Dr. R.A. Galloway, a licensed neuropsychologist, completed a report noting that he examined appellant on December 22 and 29, 1999. The hearing representative properly found that the record does not establish that Dr. Galloway is a clinical psychologist and therefore his report did not comport with the requirements of the Federal Employees' Compensation Act for medical evidence. 5 U.S.C. §§ 8101-8193, 8101(a). *Arnold A. Alley*, 44 ECAB 912, 921 (1993).

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office; or constitutes relevant and pertinent new evidence not previously considered by the Office.⁷

In her request for reconsideration, appellant stated that the Office had not issued payment to her treating physician. She requested that the Office reopen her claim, pay all outstanding medical bills and give her an opportunity to challenge Dr. Bedrin's report. Appellant alleged that the Office violated her rights under the Act by failing to pay her treating physician and by denying her claim for failure to submit medical evidence.

Appellant has attempted to advance a relevant legal argument not previously considered by the Office, that by the denial of her claim and the failure to pay her medical bills, the Office has denied her the opportunity to present further medical evidence that her work-related condition continues. The Board notes that it is well settled that once the Office meets its burden of proof to terminate a claim, the burden of proof rests upon the claimant to establish continuing disability causally related to her accepted employment injury.⁸ Therefore, the Board finds that appellant's allegations regarding the Office's responsibility for her failure to meet her burden of proof lack relevance and are insufficient to require the Office to reopen appellant's claim for consideration of the merits.

The May 13, 2002 and July 26, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ 5 U.S.C. §§ 10.609(a) and 10.606(b).

⁸ *George Servetas*, 43 ECAB 424, 430 (1992).